FILE COPY

Office - Supreme Court, U. S.
FILED
OCT 27 1947
CHARLES ELMORE CROPLEY

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1947

No. 416

FRIEDRICH WILHELM KUEHN,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

CASPER A. ORNBAUN,
P. O. Box 15, Healdsburg, California,
Attorney for Petitioner.

EVERETT H. ROAN,
1500 Central Tower, San Francisco 3, California,
Of Counsel.

BARNAR-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

Subject Index

	Page
Petition for writ of certiorari	1
Summary statement of the matter involved	2
Opinions below	4
Jurisdiction	4
Questions presented and reasons relied upon for the allowance of the writ	5
Brief in support of petition for writ of certiorari	13
I.	
Statement of basis of jurisdiction	13
II.	
Identity of petitioner	15
III.	
The record	16
IV.	
The consolidated trial	17
Petitioner not linked to Bund leaders	17
V.	
Statement of present case	19
A. Issues raised by the pleadings	19
B. Issues tried	22
C. The findings	22
D. Statement of facts	23
Petitioner's character witnesses	28
Respondent's witnesses	30
E. The questions presented	33
F. Point on which petitioner intends to rely	34
G. Specifications of error	34
Argument	35
Point I.	
The rights of naturalized citizens are the same as those of native born citizens	35

Point II. Page

In a denaturalization proceeding the burden is on the government to prove its case by clear, unequivocal and convincing evidence 37

Point III.

The evidence is insufficient to prove that petitioner procured the issuance of his certificate of naturalization by fraud 39

Point IV.

Summary of facts 56

Prayer 66

Table of Authorities Cited

Cases

Baumgartner v. United States, 322 U. S. 665, 64 S. Ct. 1240, 88 L. Ed. 1525 ..... 5, 6, 35, 56, 64, 65

Bergmann v. United States (C.C.A. 9th Circuit), 144 Fed. (2d) 34 ..... 7, 36, 56, 57, 64

Knauer v. United States, 328 U. S. 654, 66 S. Ct. 1304, 90 L. Ed. 1195 ..... 41, 56, 62

Orth v. United States (C.C.A. 4th Circuit), 142 Fed. (2d) 969, rev'g 51 Fed. Supp. 682 37

Schneiderman v. United States, 320 U. S. 118, 63 S. Ct. 1333, 87 L. Ed. 1796, 64 S. Ct. 24, 320 U. S. 807, 88 L. Ed. 488 ..... 5, 6, 38, 55, 60

United States v. Hartmann (DC-Pa.), 51 Fed. Supp. 394 .. 38

United States v. Hevmig (D.C.N.D. Ind.), 50 Fed. Supp. 566 38

United States v. Hugg (D.C.-Pa.), 51 Fed. Supp. 397 ..... 7, 35

United States v. Manzo (DC-N.J.), 59 Fed. Supp. 447 38

United States v. Schuchaardt (DC-Ind.), 48 Fed. Supp. 876 37

United States v. Sotzek (C.C.A. 2nd Circuit), 144 Fed. (2d) 576 ..... 37, 41, 54, 55, 58, 64

Codes

Judicial Code, Section 240 (a) as amended by the Act of February 13, 1925 (United States Code, Title 28, Section 347 (a)) 5, 15

Nationality Act of 1940, Section 338, 54 Stat. 1158 (United States Code, Title 8, Section 738) 4, 14

United States Code, Title 28, Sections 211, 225 and 230 14

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1947

No.

FRIEDRICH WILHELM KUEHN,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Your petitioner, Friedrich Wilhelm Kuehn, respectfully alleges:

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Petitioner was born in Germany in the year 1901, and came to the United States of America in the year 1921 or 1922, and has lived in the United States ever since, never returning to Germany. In the year 1928 he filed a declaration of intention to become an American citizen at the Courthouse for the County of Sonoma, State of California, situated at Santa Rosa, California. These papers, however, were lost at the said Courthouse, and in the year 1933 he filed a second declaration of intention and was admitted to citizenship in May, 1935, the proceeding taking place in the Superior Court of the State of California, in and for the County of Sonoma.

Shortly after he was admitted to citizenship, petitioner joined an organization known as the Friends of New Germany, which organization later became known as the German-American Bund.

On the 31st of March, 1944, almost nine years after being admitted to citizenship, his citizenship was revoked and his Certificate of Naturalization was canceled by the United States District Court because the Court found that it had been (a) fraudulently and illegally procured in that his oath that he renounced all allegiance to Germany was false; and (b) fraudulently and illegally procured in that his oath that he would support and defend the Constitution of the United States against Germany was false.

These findings were based upon the Court's conclusions as to the tenets of the Friends of New Ger-

many and of its successor, the German-American Bund, and of petitioner's attachment to said tenets because of his membership in these organizations. The views that the Court attributed to the petitioner were not his views. The record discloses, without contradiction, that petitioner was a member of these organizations for social purposes only, and that he knew nothing about the so-called "leadership" or "blood" principles attributed to the Bund and its predecessors, or about National Socialism, until he attended the trial of this action, and heard the testimony of Nazi convicts imported from the eastern part of the United States for the purpose of testifying as to their own practices in the Bund. Nevertheless, the Court attributed a knowledge of these principles to the petitioner, and because of this attribution, found that petitioner must have held the views which petitioner has disavowed; and after imputing such views to petitioner, the Court, on the basis of his holding the views thus attributed to him, held that his grant of citizenship would be canceled. Furthermore, the only definite proof as to the conduct of the petitioner was with reference to harmless acts on the part of petitioner which occurred two or three years after he was admitted to citizenship, and could not possibly show the state of petitioner's mind when he took the oath of allegiance.

OPINIONS BELOW.

The opinion of the District Court is reported in 54 Federal Supplement 63 at 73, and is also printed in the Record at page 24, particularly at page 50. As appears therefrom (54 Fed. Supp. 65, R. 25), solely for the purpose of receiving evidence as to the principles and practices of the Bund, the action against petitioner was consolidated with a number of similar actions, and thereafter the action against petitioner was tried separately on all other issues.

The United States Circuit Court of Appeals for the Ninth Circuit affirmed the judgment of the District Court, on the grounds and for the reasons stated in the opinion of the District Court, and the opinion of the Circuit Court is printed in the Record at page 404.

A petition for rehearing by petitioner was denied by the Circuit Court of Appeals. The order denying a rehearing is printed in the Record at page 406.

JURISDICTION.

The action brought for the purpose of canceling petitioner's citizenship was filed under the authority of Section 338 of the Nationality Act of 1940, 54 Stat. 1158 (United States Code, Title 8, Section 738), which confers jurisdiction of such an action upon the District Courts of the United States.

The appeal from the judgment of the District Court to the Circuit Court was filed by the above

named appellant under authority of the United States Code, Title 28, Sections 211, 225 and 230.

The opinion and decree of the Circuit Court of Appeals for the Ninth Circuit were filed July 28, 1947, and the order denying the Petition for Rehearing was made on the 25th day of August, 1947. The mandate was stayed until the 31st day of October, 1947, pending the filing of this Petition for Certiorari.

Jurisdiction to review this case upon writ of certiorari is conferred upon this Court by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. (United States Code, Title 28, Section 347 (a).)

QUESTIONS PRESENTED AND REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

1. The decision of the courts below disregards the rules established by this Court in the cases of *Schneiderman v. United States,* 329 U. S. 118, 63 S. Ct. 1333, 87 L. Ed. 1796; *Baumgartner v. United States,* 322 U. S. 665, 64 S. Ct. 1240, 88 L. Ed. 1525; and *Knauer v. United States,* 328 U. S. 654, 66 S. Ct. 1304, 90 L. Ed. 1195. Citizenship may be canceled only for fraud and illegality, and the evidence for fraud or illegality must be clear and convincing to a degree that it satisfies the mind of the Court of the truth of the charges, *beyond a reasonable doubt.* Neither fraud nor illegality can be predicated upon the imputation of political and social views to a person, where the

views are imputed solely because of his membership in an organization, and where he is wholly ignorant of disloyal principles and practices advocated by certain members of far distant chapters of the organization, with whom he has never been in contact, directly or indirectly. Mere membership in the Bund is not a sufficient ground for cancellation of citizenship. (*Schneiderman v. United States,* 320 U. S. 118, 63 S. Ct. 1333, 87 L. Ed. 1796, rehearing denied 64 S. Ct. 24, 320 U. S. 807, 88 L. Ed. 488; *Knauer v. United States,* 328 U. S. 654, 669, 66 S. Ct. 1304, 90 L. Ed. 1195.)

2. The decision of the courts below—attributing to an individual political and social beliefs and practices solely because of that person's membership in an organization, adjudging him guilty of false swearing and misrepresentation because of such supposed beliefs, and canceling his citizenship for the alleged fraud—creates a precedent which makes provisional the tenure and status of naturalized citizens, and subjects their citizenship to revocation years after the granting thereof because of said attributed political and social beliefs. The decision of the lower courts is contrary to the adjudicated cases. The cases decided by the United States courts condemn the method of proof by imputation (*Schneidermann v. United States,* 320 U. S. 118, 154, 63 S. Ct. 1333, 1350, 87 L. Ed. 1796), and recognize that a naturalized citizen has the same rights as a native-born citizen (*Baumgartner v. United States,* 322 U. S. 665, at 673, 64 S. Ct. 1240, 88 L. Ed. 1525), including the right of opin-

ion together with the right to express it (*United States v. Hugg,* D. C. Pa., 51 Fed. Supp. 397, 399; *Bergmann v. United States,* C. C. A. 9th Circuit, 144 Fed. (2d) 34 at 38), as for example, the right to express his views on Communism, as the record shows the petitioner did.

3. The decision of the courts below amounts to the setting up of standards of citizenship by the Court, instead of by Congress; and it actually establishes a rule of naturalization which Congress deliberately refused to enact.

4. When, in 1935, an applicant for citizenship has fully complied with the statutory requirements, has informed the naturalization Court as to all the matters required of him, and the naturalization Court in compliance with the statute thereupon grants citizenship, from which no appeal is taken by the Government, a Court cannot, in a cancellation proceeding in 1944, cancel citizenship by substituting its views as to the attachment of the applicant to the Constitution of the United States for that of the naturalization Court.

5. The decision of the lower courts deprives the petitioner of a valuable right without justification. There is a complete absence of evidence that there was an imposition upon the naturalization Court, for there was no evidence that petitioner held the abstract beliefs or mental reservations which the Court now holds he must have held and therefore must have misrepresented or concealed.

6. The findings that petitioner's oath was false are all based upon the assumption that petitioner held

as political and social beliefs those which the Court attributed to him because of his membership in the Bund. There is no foundation in the evidence for these findings; and the Court in attributing to the petitioner the beliefs and practices which it finds were misrepresented or concealed from the naturalization Court, did not make a judgment of fact, but imposed its own beliefs as to the purposes and practices of the Bund upon the petitioner. The Court in so deciding worked a forfeiture of petitioner's liberty and property without due process of law.

7. The only finding of the commission of a disloyal act by petitioner is based upon the testimony of the former mother-in-law of petitioner, who was discredited by the trial judge himself; whose vindictiveness toward petitioner was fully shown throughout the trial of the entire case, and who called petitioner vile names and threatened to "get even" with him. There is no credible evidence in the record which sustains said finding. Further, it is apparent that the trial judge was misled into believing that the testimony of the mother-in-law was corroborated by another witness. The record clearly shows that this was not the case.

8. The record shows that at all times petitioner was a loyal and law-abiding citizen of the United States, and the evidence is insufficient to support the findings or judgment of the lower courts.

Wherefore, petitioner prays that a writ of certiorari be issued by this Court directed to the United States Circuit Court of Appeals for the Ninth Circuit,

to the end that the said opinion and judgment of the said Court in the above entitled cause be reviewed by this Court, and that upon such review, said judgment of the Circuit Court of Appeals be reversed and that petitioner be allowed such other relief as this Court may deem meet and proper in the premises.

Dated, San Francisco, California,
October 22, 1947.

CASPER A. ORNBAUN,
Attorney for Petitioner.

EVERETT H. ROAN,
Of Counsel.

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for petitioner in the above entitled cause and that in my judgment the foregoing petition for a writ of certiorari is well founded in point of law as well as in fact and that said petition is not interposed for delay.

Dated, San Francisco, California,
October 22, 1947.

CASPER A. ORNBAUN,
Attorney for Petitioner.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1947

No.

FRIEDRICH WILHELM KUEHN,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

STATEMENT OF BASIS OF JURISDICTION.

On February 26, 1943, the United States Attorney for the Northern District of California, Southern Division, filed a complaint against appellant, then a resident of the City of Petaluma, County of Sonoma, State of California, which alleged that the order of the Superior Court of the State of California, in and for the County of Sonoma, made on the 16th day of May, 1935, admitting appellant to citizenship, should

be revoked and set aside, and that Certificate of Naturalization No. 2368203 issued to the appellant pursuant to said order should be canceled because of appellant's alleged fraud and deception in procuring the same. (R. 2-6.) Authority for filing said action is found in the provisions of Section 338 of the Nationality Act of 1940, 54 Stat. 1158 (United States Code, Title 8, Section 738; Appendix p. vi), which confer jurisdiction of such an action upon the District Courts of the United States.

Judgment in favor of the appellee was filed March 31, 1944 (R. 176), and on the 8th day of April, 1944, appellant filed a motion for a new trial (R. 178), which was denied by an order made and filed April 28, 1944. Thereafter appellant on the 27th day of July, 1944, filed a notice of appeal from said judgment and his undertaking for costs on appeal (R. 180), and the record in this case, certified by the clerk of the District Court, was filed with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit. (R. 201, 202.)

The said judgment rendered in this action is a final judgment within the purview of Section 225, Title 28, United States Code, and is therefore appealable. Consequently the United States Circuit Court of Appeals had jurisdiction to hear this appeal. (United States Code, Title 28, Sections 211, 225 and 230; Appendix, pp. vii-viii.)

The opinion and decree of the Circuit Court of Appeals for the Ninth Circuit were filed July 28, 1947, and the order denying the Petition for Rehearing was

made on the 25th day of August, 1947. The mandate was stayed until the 31st day of October, 1947, pending the filing of this Petition for Certiorari.

Jurisdiction to review this case upon writ of certiorari is conferred upon this Court by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. (United States Code, Title 28, Section 347 (a); Appendix, p. viii.)

II.

IDENTITY OF PETITIONER.

As shown by the caption of the complaint filed against the petitioner in the District Court, his true name is Friedrich Wilhelm Kuehn (R. 2), although he is also sued under various other names. When called to witness stand the clerk of the Court examined petitioner as follows (R. 210):

"The Clerk. Please state your full name to the Court.

A. Fred Kuehn."

These two names Friedrich Wilhelm Kuehn and Fred Kuehn appear throughout the entire record as the true names of petitioner, and the only names used by him.

This is respectfully called to this Court's attention in order that petitioner will not be confused with the "Fritz Kuhn" referred to in the findings of the District Court. (R. 111.) As appears from said findings, "Fritz Kuhn" stood trial in New York City

and was described as one of the "National Bund officials and prominent Nazis". Petitioner was never in any way connected with the "Fritz Kuhn" in the trial of this action or otherwise.

III.

THE RECORD.

The present case and twenty-seven others were consolidated for the sole purpose of receiving evidence as to the principles and practices of the organization known as the German-American Bund, its predecessors and affiliates. (Opinion of District Judge, R. 25.) The consolidated trial resulted in a voluminous record consisting of the testimony of numerous witnesses and of numerous exhibits. On motion duly made by this petitioner, the Circuit Court made its order (R. 205), dispensing with the printing of the reporter's transcript of the testimony and the exhibits, the Court to have recourse to the same, however, and said order requiring the petitioner to print as an appendix to his brief the portions of the reporter's transcript and the exhibits to which he desires to call the Court's attention.

In the present proceeding, instead of attaching any portion of the reporter's transcript to his brief as an appendix, petitioner has printed the entire reporter's transcript in his individual case and it appears in the Transcript of Record, pages 207 to 399, inclusive.

Accordingly the record on this appeal consists of the following:

1. Transcript of Record, herein referred to as "R", containing the Clerk's Transcript and the Reporter's Transcript in the separate action filed against the petitioner in the District Court (*United States v. Kuehn,* No. 22507G), printed in full.

2. Court Reporter's Transcript and Exhibits in Action No. 22398-G, entitled *United States v. Bruno Holtz and Twenty-Seven Others,* not printed. (Consolidated trial.)

3. Petitioner's petition for writ of certiorari and brief in support thereof.

4. Additional matter, if any, presented by respondent.

IV.

THE CONSOLIDATED TRIAL.

PETITIONER NOT LINKED TO BUND LEADERS.

As stated above, the present case and twenty-seven others were consolidated "solely for the purpose of receiving evidence as to the principles and practices of the organization known as the German-American Bund, its predecessors and affiliates." (Opinion of District Judge, R. 25.)

This was the sole issue tried in the consolidated action. It was a trial of the Bund itself, and not of the individual defendants.

In the course of the consolidated trial, the respondent (plaintiff) called a number of the Bund leaders from the East Coast, among them Fritz Gissibl, Severin Winterscheidt, Fritz Kuhn and William Luedtke. The record shows, and it is a matter of common knowledge, that certain of these witnesses were temporarily released from prison in order to testify in San Francisco.

Petitioner was in no way connected with any of these notorious characters or with their subversive practices.

At the beginning of the trial of the present case in the District Court, the respondent (plaintiff), through its attorney made the following statement to the Court (R. 209):

> "Mr. Patton. I wish to call your Honor's attention at this time to the record in the consolidated case of the United States v. Holz, et al., reference to the testimony in the consolidated case concerning the defendant on trial here appearing on page 731 of the transcript, the testimony which reflects the attendance of the defendant at Bund meetings, and his appearance in O. D. uniform, and also at page 738 of the transcript, which shows the identification of Government's Exhibit No. 340, which is a photograph of a group of Bund members from the San Francisco unit, and the identification of the defendant Kuehn in the photograph, page 739, showing that exhibit was admitted in evidence; also, Exhibit 338, which is a picture of a Christmas celebration by the German-American Bund and the Friends of New Germany in 1935 in evidence,

as reflected by page 708 of the transcript, and Exhibit 354, which is the cash journal of the German-American Bund and the Friends of New Germany, which was admitted in evidence, as reflected by page 649 of the transcript."

This is merely evidence that petitioner attended Bund meetings and was photographed with Bund members.

Petitioner had an opportunity to hear speeches by Herman Schwinn, described as the "West Coast Leader" (R. 111), and Fritz Kuhn, East Coast leader, but was not interested. He did not pay any attention to Schwinn's speeches, and when Fritz Kuhn was talking petitioner left the hall without listening to any part of the speech, and did not return until Fritz Kuhn had left. (R. 224-225.)

There is no evidence in record in the consolidated trial in any way linking petitioner with the witnesses who testified as to the principles and practices of the Bund at the consolidated trial, or to show that he knew about such principles or practices, or subscribed to them.

V.

STATEMENT OF PRESENT CASE.

A. Issues raised by the pleadings.

The complaint alleged that on May 16, 1935, petitioner, then a subject of Germany, was admitted to become a citizen of the United States by the Superior

Court of the State of California, County of Sonoma, and that Certificate of Naturalization No. 2368203 was issued to him; that petitioner procured said Certificate of Naturalization by means of fraud and deceit consisting of: (1) false representations and concealment of material facts; and (2) the making of a false oath of allegiance; that without said fraud and deception petitioner would not have been admitted to citizenship and the said Certificate of Naturalization would not have been issued. (R. 3-4.)

The complaint further alleged that on making said oath of allegiance, petitioner made the following declarations which were false and untrue: (1) that he was attached to the principles of the Constitution of the United States; (2) that he intended to become a citizen of the United States and to renounce allegiance and fidelity to any foreign prince, potentate, state or sovereignty and in particular that he renounced allegiance and fidelity to the government of Germany of which at that time he was a subject; and (3) that he would support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic.

The complaint also alleged that said declarations were false and untrue in that: (1) in truth and in fact it was not the intention of petitioner to renounce his allegiance to any foreign country, whether the government of Germany or some other sovereignty; (2) the petitioner was not and is not attached to the principles of the Constitution of the United States of America; and (3) that petitioner retained and held

allegiance to the government of Germany, or some other foreign government superior to that which he recognizes to the United States of America. (R. 4-5.)

The said oath so made by the petitioner, the complaint alleged, was fraudulent and illegal and was made for the purpose of obtaining the rights, privileges and protection of United States citizenship, without intending to assume the duties thereof; therefore, charged, the complaint, petitioner's Certificate of Naturalization is subject to cancellation. (R. 5-6.)

Petitioner's amended answer admits the allegations of the complaint contained in paragraph II thereof to the effect that petitioner became a citizen of the United States of America on the 16th day of May, 1935, and that Certificate of Naturalization No. 2368203 was issued to him (R. 17), but denies each and every charge of misrepresentation, fraud, deceit and illegality alleged in the complaint.

The amended answer also sets up the following special defenses: (1) that the complaint did not state facts sufficient to constitute a cause of action; (2) that the District Court did not have jurisdiction; (3) that the action was barred by laches; and (4) that the judgment of the Superior Court of the State of California naturalizing petitioner was *res judicata*.

The issues thus presented by the pleadings are: (1) was the petitioner guilty of fraud as alleged in the complaint?; (2) did petitioner in 1935 procure his Certificate of Naturalization fraudulently and illegally?; and (3) was petitioner's conduct consistent with his oath that he had in fact renounced all

allegiance to the German government, that he was attached to the principles of the Constitution of the United States, and that he would support and defend the Constitution of the United States against all enemies, foreign and domestic?; (4) sufficiency of the complaint to state a cause of action; (5) jurisdiction of the District Court; (6) laches in filing action; (7) *res judicata.*

B. Issues tried.

The issues tried are the first three stated immediately above, to-wit: (1) was the petitioner guilty of fraud as alleged in the complaint?; (2) did petitioner procure his Certificate of Naturalization fraudulently and illegally?; and (3) was petitioner's conduct consistent with his oath of allegiance?

C. The findings.

Findings IV to XI (R. 159-162) are specific, but are misleading in that they do not fairly state the facts which they purport to cover. It is petitioner's contention that these findings place the worst possible light on his conduct, instead of giving him the benefit of every doubt, as required by the authorities hereinafter referred to. Findings XII to XIV (R. 162-163) are general and are not supported by the evidence, as will hereinafter more fully appear.

The conclusions of law are that petitioner procured his Certificate of Naturalization fraudulently and illegally. It is petitioner's contention that the evidence is insufficient to sustain the conclusions of law, as hereinafter more fully appears.

D. Statement of facts.

The petitioner, called for cross-examination by the appellee, testified that he was born in Germany in the year 1901, and while there received a grammar and high school education, the latter being equivalent to two years in junior college in this country; *that he had no military training in Germany and at no time served in the German army;* that he came to the United States in 1921 or 1922, and had *remained here ever since, never returning to Germany;* that his original declaration of intention to become an American citizen was filed in 1928 but was lost at the county court-house, and he again filed in 1933, and was admitted to citizenship in May, 1935; that he became a member of the Friends of New Germany, predecessor of the German-American Bund, in June, 1935, and continued to be a member until the beginning of 1939; that he signed a printed application for membership which contained no requirement of "Aryan birth" or any reference to the "leadership principle," and that he did not know that these organizations were governed by the "leadership principle" until he heard witnesses testify at the consolidated trial referred to above; that after he signed an application for membership in San Francisco, he and others formed a "Petaluma Group," which was a branch of the San Francisco organization, and that he was chosen as "spokesman or head" of the Petaluma unit, but was never referred to as a "leader"; that he was never told that he was required to obey the orders of the leaders of the organization or of anyone else; that he read very little of the literature published by the

"Friends of New Germany", and only glanced at German newspapers; that the meetings of the "Petaluma Group" were purely social, and he believed that such gatherings would promote friendly relations between the United States and Germany; that he opposed Communism, and "never would stand for any doctrine like that to overthrow our government." (R. 210-219.)

Petitioner further testified that he gave up his allegiance to Germany when he left there in 1921, that ever since he had been in the United States he had been attached to the principles of the Constitution and his attitude had never changed in this respect (R. 219-220); and he testified that he had been classified 1-A for United States military service and would freely and willingly go to Germany and fight against Germany on German soil, but would prefer to fight against Japan. (R. 221).

Petitioner testified that he attended Bund meetings for social purposes only, did not listen to speeches and did not hear the so-called "blood principle" discussed at any meetings (R. 222-225); that he did not know anything or hear anything about the "leadership" or "blood" principles attributed to the Friends of New Germany and the German-American Bund, or about National Socialism, until he attended the consolidated trial referred to above in the year 1943. (R. 215, 222, 223, 348-352).

Petitioner testified on direct examination, that he had been in business in Petaluma since 1929, being

associated with his former brother-in-law, Joseph M. Skoff, since 1936, in the ice and fuel business, and until excluded from California in 1942 by the "F. B. I."; that in conducting this business he had 1500 customers (R. 329-331); that he always maintained his credit with the banks. (R. 331-332).

Petitioner testified that he had always been a law-abiding citizen, has never been arrested for any crime, had been interested in seeing that the laws were obeyed, for a time was a deputy sheriff, purchased United States Bonds, and contributed to the Red Cross and other worthy causes. (R. 332-335). He testified that he believed that Jews have the same rights as other people and that some of his best friends were Jews, but that he was opposed to certain Russian Communistic Jews in Sonoma County who promoted strikes among ranch workers and caused crop losses. (R. 350-351, 369-370); in 1937 or 1938 petitioner prepared a speech, which he read at a meeting of the American Legion, which document is marked "Plaintiff's (Respondent's) Exhibit 5" (R. 247), and which is set forth in full in the appendix hereto. (Appendix ix-xv.) Next to the last paragraph of this document reads as follows:

> "I am thanking you of having given me the opportunity of speaking to you about the German American Bund and I am sure, that you do understand the Bund lots better now, and this would be the case, if everybody would know more about the Bund. But should it occur, that the Bund ever would change his guide-lines to any-

thing unAmerican or subversive, I would withdraw my name from the membership-list immediately. I believe America for the Americans and if these agitators see no matter what kind they may be, see a haven in Communistic Russia, or may these agitators be Fascists or Nazis, why don't they go back to Russia, Spain, Italy or Germany? And if we do not have the laws to get rid of them, let Congress enact laws at once, that will do it."

In 1938 petitioner wrote a letter to the Associated Farmers of California which is marked "Plaintiff's (Respondent's) Exhibit 4," and reads as follows:

"Petaluma, Calif.

Associated Farmers of California
Russ Building, 235 Montgomery Str. 6-17-38
San Francisco, Calif.

Gentlemen:

Received today your bulletin Vol. 1, No. 67, and read the article: The Hammer, The Sickle and the Swastika. As you frankly admit you know very little about the German-American Bund and would it not have been wiser to find out more about the Bund, before writing such articles? I always believe to think first and act then and not to act first and start thinking later? Don't you admit also, that is the best policy?

In regard to the swastika you can find it now and hundred years ago in various types of our every day life and most of this before there ever was thought of a Herr Hitler.

For your information you will please find enclosed the purpose and aims of the German American Bund, so you may look wright into the background. I am sending you this as a member of the Associated Farmers and as a member of the Bund also. For any further information of any kind Mr. Schwinn, the Pacific Coast director, 634 West 15th, Str. Los Angeles, will give you any information you would like to have. I am sure of that.

As a true American I not only say, like you write in your article: Away with both of them, I even say, away with all them kind of Ism, and for real democracy and let give America back to the Americans

America first and last yours truly

F. KUEHN."

As stated in this letter, there was enclosed a document setting forth the aims and purposes of the German-American Bund (R. 373-374), which petitioner testified, were the same as those appearing in Defendant's (Petitioner's) Exhibit "D" (R. 346) reading as follows:

"AIMS AND PURPOSES:

1—Respecting and defending the Constitution of the United States of America.

2—Honoring and respecting the Flag and the lawful institutions of the United States of America and to Foster truly American ideals.

3—Creating of a commonwealth of all citizens and prospective citizens of German extraction for

the purpose of promoting and maintaining such cultural values as the German Language, Literature, Music, Sports and other physical acquisitions, in order to hereby create and preserve a spiritual contact between the native land and the country of adoption.

4—Creating amongst our fellow citizens a better understanding for the ideals of a New Germany.

5—Furthering the friendly relations between the United States and Germany, and resist with all lawful means any attempt to destroy this much needed harmony."

Petitioner testified that these were the only aims and purposes he had seen. (R. 346.)

Petitioner denied that he had ever dishonored the American flag or kissed Hitler's picture, as he was accused of doing by his former mother-in-law, respondent's witness, whose testimony is hereinafter referred to, and denied that he heard anything about these accusations until after this action was filed. (R. 328-329, 346-347.)

Petitioner's character witnesses.

Petitioner called several character witnesses as follows:

William Caulfield testified:

He had known petitioner about twenty years; had seen him often; had never known petitioner to say or do anything disrespectful to the Constitution of the

United States; had never heard any one speak disrespectfully of petitioner as a citizen of the United States. (R. 375-376.)

Joseph M. Skoff testified:

During all of the years of his association with petitioner in business, his relations had been pleasant; that he had always found petitioner to be honest, reliable, and trustworthy. (R. 377-378.)

Carl Paula testified:

He had known of petitioner for a good many years and worked for him; had never known petitioner to do or say anything that would be against the Constitution of the United States. (R. 387-388.)

Otto Diestel, brother-in-law of petitioner, testified:

He had known petitioner ever since petitioner came to the United States; that he knew petitioner came here for the purpose of becoming a citizen; that he had never known petitioner to say anything contrary to the principles of the United States form of government or the Constitution; that he had never known him to do anything disloyal, or heard anything against his honesty and integrity; that he had attended gatherings of members of the Friends of New Germany and German-American Bund with petitioner and that such gatherings were of a purely social nature. (R. 391-395.)

Sam Kinspel testified:

He testified to the same general effect as the other character witnesses. (R. 389-390.)

Respondent's witnesses.

Respondent called several witnesses whose testimony was conflicting, and tended to confuse the issues rather than to clarify them. Accordingly, the testimony of these witnesses is not set forth in the appendix hereto. The names of these witnesses, and the references to their testimony in the Reporter's Transcript are as follows:

Hugh E. Hampton—R. 251-258; 397-399;
Lloyd H. Applegate—R. 259-265;
Chris Knudtsen—R. 293-300;
Vera G. Sherman—R. 310-314;
Andreas Peter Jessen—R. 314-320.

The appellee also called:

Mrs. Evana Rahunc, former mother-in-law of the petitioner.

Mrs. Evana Rahunc testified (Direct examination):

That in 1937 she was living in Petaluma with petitioner and his wife, the latter being a daughter of the witness; *that in July, 1937,* she, petitioner, and petitioner's wife were in a room used by petitioner as his office in his home, and that during a conversation between the three of them at that time and place the petitioner "grabbed" a picture of Hitler, saying "This is my god," and "grabbed" an American flag and rubbed it on the seat of his pants, saying "This is your government." (R. 268-270.)

(Cross examination)

On cross examination Mrs. Rahunc testified: To the same effect as on direct examination and at the time and place petitioner was talking to his wife; that she, the witness (Mrs. Rahunc) immediately told her son (Joseph M. Skoff) about the incident "if he remembers"; that (referring to the day she appeared in court in this trial) "I told him today, do you remember," and he said "I forget," and that he then told her "not to tell any lie"; that she told "lots of people", "more than a hundred", about the incident and conversation; that she told her daughter-in-law, but could not remember any other name; that while she was living with petitioner she had "personal" trouble with him and told Karl Paula (a witness in the case) that she "was going to get even with him", meaning the petitioner. (R. 282-288.) She also testified as follows on cross-examination:

"Q. Isn't it a fact that the first time that you ever heard of the flag incident was when some of the government officers talked to you in the early part of this year, 1943? A. Yes, they were talking, and lots of people were talking too.

Q. Didn't the government agents come to you in the early part of this year, 1943? A. Yes.

Q. Did they say anything about the flag to you? A. Well, you know they asked me if I know anything, and I told them all about it.

Q. When did you talk to the government agents about this? A. Oh, that was, I don't know what month exactly it was, this year—I don't know whether it was in March or April; it was on a Saturday morning.

Q. Who was it that came to you at that time, do you recall? A. There was two of them.

Q. There were two men? A. Two men, yes. I don't know whether it was Mr.—what is his name—both of them are here.

Q. Which gentlemen came to you? A. This one and the other one in back, both of them.

Q. Those two gentlemen came to you? A. Yes, those two gentlemen came.

Q. That was along in April, you think, 1943? A. Yes, I think it was in April, it was on the 27th, it was on a Saturday, I put it down, but I forget.

Q. What did they say to you about the flag? A. They just asked me questions, if I know anything about it, and I told them everything I know, and I said I could prove that, but I could not prove more.

Q. What questions did they ask you? A. *They asked me if I saw anything Mr. Kuehn had done with the United States.*

Q. *With the United States Government?* A. *The United States flag, I told them all about it.*

Q. They asked you first if you ever heard Mr. Kuehn say anything about the United States flag, is that right? A. Yes, if I know anything about it, and I said yes." (R. 284-285.) (Italics ours.)

Joseph M. Skoff, son of the former mother-in-law of petitioner, testified:

That the first time he heard anything about an incident in which appellant was accused of dishonoring the American flag was in the year 1943; that at that time there was "Quite a bit of hard feeling between the family and him (petitioner)," and that his mother

(Mrs. Rahune) "was against him (petitioner)" very much. He further testified that he did not remember having any conversation with his mother (Mrs. Rahune) about the incident of petitioner and the American flag, and that he had no recollection of any conversation with his mother on the subject until the "F.B.I." contacted her in the year 1943; that all of the matters, both concerning the kissing of Hitler's picture and the flag incident were related to him in the early part of 1943 for the first time. (R. 278-285.)

Mrs. Mary Theresa Ronsheimer, daughter of Mrs. Rahune, and former sister-in-law of the petitioner, testified:

That she lived with petitioner for about a year and a half (1936 to July, 1937); that petitioner kept a small picture of Hitler on his desk; that petitioner said Hitler had done a lot for Germany; that when he referred to Germany he would not say "our country," but would say "back home"; and that "in front of me and my sister" he kissed Hitler's picture *once.* (R. 301-306.)

E. The questions presented.

1. Was the petitioner, upon being granted citizenship, thereafter entitled to enjoy all of the constitutional rights and privileges of native born citizens?

2. Did the respondent, the Government of the United States of America, sustain its burden of proving that petitioner obtained his Certificate of Naturalization on May 16, 1935, illegally and by means of fraud?

3. Did the petitioner obtain his Certificate of Naturalization on May 16, 1935, by fraud?

4. Did the petitioner obtain his Certificate of Naturalization on May 16, 1935, illegally?

F. Point on which petitioner intends to rely.

The evidence in said action is insufficient to justify the judgment and/or the findings of fact and/or the conclusions of law.

G. Specifications of error.

1. The lower Courts erred in making the following numbered findings of fact in that the evidence is insufficient to justify said findings and the implications they cast upon petitioner:

a. Finding No. IV (R. 159)
b. Finding No. V (R. 160)
c. Finding No. VI (R. 160)
d. Finding No. VII (R. 160)
e. Finding No. VIII (R. 161)
f. Finding No. IX (R. 161)
g. Finding No. X (R. 161)
h. Finding No. XI (R. 161)
i. Finding No. XII (R. 162)
j. Finding No. XIII (R. 163)
k. Finding No. XIV (R. 163)
l. Finding No. XV (R. 163)

2. The lower courts erred in making the following numbered conclusions of law in that the evidence is insufficient to justify said conclusions of law:

a. Conclusion of Law No. II (R. 164)
b. Conclusion of Law No. III (R. 164)

3. The lower courts erred in rendering judgment that the order admitting petitioner to citizenship be revoked and that Certificate of Naturalization No. 2368203, issued to petitioner, be cancelled and surrendered, in that the evidence is insufficient to justify said judgment.

ARGUMENT.

POINT I.

THE RIGHTS OF NATURALIZED CITIZENS ARE THE SAME AS THOSE OF NATIVE BORN CITIZENS.

It is well settled that a naturalized citizen has the same rights as a native born citizen, *including the right of free speech.* In *Baumgartner v. United States,* 322 U. S. 665 at 673, 64 S. Ct. 1240, 88 L. Ed. 1525, the court says:

> "'Under our Constitution, a naturalized citizen stands on an equal footing with the native citizen in all respects, save that of eligibility to the Presidency.' *Luria v. United States,* 231 U. S. 9, 22."

We quote from *United States v. Hugg* (D.C.Pa.), 51 Fed. Supp. 397 at 399:

> "Once a man has been admitted to citizenship he must be accorded exactly the same rights as every other citizen of the United States. Otherwise the process of naturalization itself becomes a fraud. *These rights include the right of free speech and the right to criticize our government*

and to disagree with its policies. They include the right to read about and study any forms of political or social activity anywhere in the world and to form opinions upon them." (Italics ours.)

To similar effect is *Bergmann v. United States* (C.C.A., 9th Circuit), 144 Fed. (2d) 34 at 38:

"The courts have been meticulous in announcing over and over again that there are not two different sets of rights to be enjoyed by two different kinds of citizens. *The constitutional right of opinion together with the right to express it possessed by every citizen would, in truth, become unreal and academic to the naturalized citizen if his citizenship would be cancellable because of opinions held and expressed as to current events happening after his admission to citizenship.* No such condition is imposed upon native born citizens. The inference of fraud in procuring the status of citizenship can only be drawn from facts clearly, unequivocally, and convincingly shown to establish the existence of fraud in the taking of the necessary steps toward naturalization. 'Citizenship, once bestowed upon proceedings in the federal courts, should not be lightly taken away.' United States v. Woerndle, 9 Cir., 288 F. 47, 49." (Italics ours.)

POINT II.

IN A DENATURALIZATION PROCEEDING THE BURDEN IS ON THE GOVERNMENT TO PROVE ITS CASE BY CLEAR, UNEQUIVOCAL AND CONVINCING EVIDENCE.

Recently numerous cases have been decided placing a heavy burden of proof on the government in denaturalization cases such as the present one, requiring the government to prove its case *"beyond a reasonable doubt."*

The burden is on the government to show fraud or illegality in obtaining citizenship by clear, unequivocal and convincing evidence. *Orth v. United States* (C.C.A. 4th Circuit), 142 Fed. (2d) 969, rev'g. 51 Fed. Supp. 682; *United States v. Sotzek* (C.C.A. 2nd Circuit), 144 Fed. (2d) 576, rev'g. 49 Fed. Supp. 407.

In a denaturalization proceeding the evidence must be clear, unequivocal, and convincing to support judgment for the government, and the Court must resolve all doubts in favor of the defendant. *United States v. Sotzek* (C.C.A. 2nd Circuit), 144 Fed. (2d) 576, rev'g. 49 Fed. Supp. 407.

In an action to cancel certificate of naturalization, plaintiff has the burden to ascertain the state of mind of the defendant upon the date when he took the oath referred to in the petition and received his certificate of naturalization. *United States v. Schuchaardt* (DC-Ind.), 48 Fed. Supp. 876.

In denaturalization proceedings the facts and the law should be construed as far as possible in favor of the citizen and especially is this so when the attack is

made long after the time when the certificate of citizenship was granted and the citizen has meanwhile met his obligations and has committed no acts of lawlessness. *United States v. Hartmann* (DC-Pa.), 51 Fed. Supp. 394; *United States v. Manzo* (DC-N.J.), 59 Fed. Supp. 447.

In the course of its opinion in the leading case of *Schneiderman v. United States,* 320 U. S. at page 125, 63 S. Ct. at page 1336, 87 L. ed. 1796, the court says:

> "*Assuming as we have that the United States is entitled to attack a finding of attachment upon a charge of illeglity, it must sustain the heavy burden which then rests upon it to prove lack of attachment by 'clear, unequivocal, and convincing' evidence which does not leave the issue in doubt.* When the attachment requirement is construed as indicated above, we do not think the government has carried its burden of proof." (Italics ours.)

In the recent case of *United States v. Hevmig* (D.C.N.D. Ind.), 50 Fed. Supp. 566 at 567, the Honorable Judge, after reviewing a number of decisions, sums up as follows:

> "From these excerpts from decisions by other Federal Courts it seems clear to me that *the rule not only should be, but is, that the evidence for fraud must be clear and convincing to a degree that it satisfied the mind of the court of the truth of the charges, beyond a reasonable doubt.*" (Italics ours.)

POINT III.

THE EVIDENCE IS INSUFFICIENT TO PROVE THAT PETITIONER PROCURED THE ISSUANCE OF HIS CERTIFICATE OF NATURALIZATION BY FRAUD.

It is the contention of the petitioner that the government did not sustain its burden of proving that petitioner procured the issuance of his Certificate of Naturalization by fraud; that *there is no credible* evidence in the record to show that, either prior to or subsequent to his being admitted to citizenship in the United States of America, petitioner committed any act of disloyalty; that to the contrary, the evidence shows that at all times since petitioner's entry into the United States he has been attached to the principles of the Constitution, and supported the Constitution and laws and the democratic form of government.

Following is an analysis of the findings of fact, conclusions of law and judgment, in connection with the opinion of the honorable trial judge:

(1) Finding No. III (R. 159) reads as follows:

> "That defendant joined the Friends of the New Germany in March 1935, before he became a naturalized citizen of the United States in May of the same year, and continued as a member of said organization after its name was changed to German-American Bund until the latter part of 1938 or the beginning of 1939."

The evidence is in conflict as to the date on which petitioner joined the Friends of New Germany. Petitioner testified that he joined in June. The govern-

ment put in evidence a record purporting to show the payment of dues on March 22, 1935. In any event, either shortly before or shortly after being admitted to citizenship on May 16, 1935, petitioner joined the Friends of New Germany, the predecessor of the German-American Bund.

It is quite apparent from the opinion of the honorable trial judge, in the consolidated case, that he imputed to every member of the German-American Bund an adherence to the principles of Naziism—the leadership principle, the blood principle, and National Socialism, and that, in his opinion, in order for the government to sustain its burden of proof, it was necessary for the government to prove very little more. The opinion reads in part as follows (R. 45):

> "In expressing the view of the Court in the Schneiderman case, Mr. Justice Murphy pointed out: Our concern is with what Congress meant to be the extent of the area of *allowable thought* under the statute. (Emphasis supplied.) The holding of the Court was, in effect, that belief in and adherence to the vicious principles of Naziism is *not* within 'the area of allowable thought.'
>
> "Hence *Schneiderman v. U. S.* does not guide us except as to the rules governing denaturalization proceedings and the character and degree of proof required. The facts there are not the facts here.
>
> *"It is my conclusion that the aims, purposes and practices of the German-American Bund, its predecessors and affiliates, were clearly un-American.* Evidence that any defendant substantially par-

> ticipated in the practices thereof may therefore be taken into account in determining the issue of denaturalization. However, the facts concerning the membership and participation of each of the several defendants in the Bund, its predecessors and affiliates, must be carefully examined and only upon that basis, plus other pertinent circumstances, can decision be justly made with respect to each of the defendants." (Italics ours.)

These statements by the lower court ignore the fact that the aims and purposes of the Bund, so far as known to the petitioner, were those set forth above (Defendant's Exhibit "D"), in brief as follows: To defend and support the Constitution; to honor and respect the Flag; to promote culture; and to promote friendship between the United States and Germany. Petitioner further testified that he knew nothing of the leadership principle, the blood principle or of National Socialism.

Under the authorities, mere membership in the Bund is not a sufficient ground for the cancellation of citizenship.

> *Knauer v. United States,* 328 U. S. 654, 66 S. Ct. 1304, 90 L. Ed. 1195;
>
> *United States v. Sotzek* (C.C.A. 2), 144 Fed. (2d) 576.

There is no evidence whatever connecting petitioner with the four questionable witnesses imported from the East Coast to testify in the consolidated case. Petitioner testified that he knew nothing of their

principles or practices until he heard them testify in court.

In making this finding the honorable trial judge imputed to petitioner a knowledge of the principles and practices of Naziism and an adherence to the same. This is contrary to the evidence, and is also contrary to the law established by the Supreme Court of the United States.

(2) Finding No. IV (R. 159) reads as follows:

> "That during the entire period of defendant's membership in the Friends of the New Germany and the German-American Bund, he was the leader of the Petaluma Unit, or, as he testified, the General Chairman, and as such was active in the preparation and distribution of notices of functions under the sponsorship of these organizations; that invitations or notices of this type were prepared by defendant on an occasion in 1938, announcing a speech to be made in San Francisco by Hermann Schwinn, Western leader of the German-American Bund; and on another occasion such notices were prepared by defendant, announcing the showing of a German film at the German-American Bund meeting place in Petaluma in 1936."

Petitioner testified that the Petaluma unit to which he belonged was purely a social organization. The activities described in this finding No. IV, were purely social. Petitioner sent out invitations to people to attend parties and dances, in one instance to hear a speech, in another instance to see a moving picture.

There is no evidence that any of these acts were subversive, but the finding imputes subversiveness to petitioner.

(3) Finding No. V (R. 160) reads as follows:

> "That on June 17, 1938, defendant wrote a letter to the Associated Farmers of California at San Francisco in regard to the German-American Bund, stating that further information could be obtained from Herman Schwinn, who was termed as Pacific Coast Director at Los Angeles. In said letter was enclosed a circular of some kind relative to the aims and purposes of the German-American Bund, and defendant also stated in part that the swastika had been used a hundred years ago—before there was ever a thought of Herr Hitler."

The letter referred to in this finding (Plaintiff's Exhibit 4) is quoted in full above. Enclosed in the letter was a statement of the "Aims and Purposes" of the Bund, which petitioner testified were the same as those of the Friends of New Germany (Defendant's Exhibit "D") quoted in full above. These aims and purposes were, briefly, to support the Constitution, honor the Flag, and to promote friendly relations between the United States and Germany. The finding imputes to petitioner the sending of subversive literature. This letter commented upon the swastika being an ancient emblem. This is a fact.

> "*Swastika*, a decorative and symbolic ornament consisting of a cross with equal arms, to the end of each of which is attached a line run-

ning at right angles to it, all these extensions occurring on the same relative side, so that all four extensions have the same rotary direction in relation to the center. The swastika is one of the most ancient and widespread of all ornamental forms, appearing in both hemispheres. It is generally interpreted as a sun symbol. It occurs in Aegean and archaic Greek pottery and in certain types of fret, found in Egypt and Greece. In some examples it appears as two identical S-curves, intersecting in the middle and set at right angles. Occasionally three arms are found, and the hearaldic symbol of three running legs set radially, may be a development of the swastika."

Encyclopaedia Britannica, Vol. 21, p. 633.

The letter concludes:

"America first and last yours truly, F. Kuehn."

Certainly petitioner was not distributing Nazi propaganda by this letter.

(4) Finding No. VI (R. 160) reads as follows:

"That in 1937 or 1938, defendant made a speech before the American Legion in Petaluma wherein he defended the German-American Bund as an American organization to promote good feeling between Germany and the United States, made a strong attack on Communism and the Jews, and 'themed' that Communism was fostered by the Jews."

In this finding a knowledge of and adherence to the principles of Naziism is again imputed to petitioner.

He indicated one of the purposes of the Bund was to promote friendly relations between the United States and Germany. Such a purpose is not subversive. He attacked Communism and Communistic Jews. As a citizen of the United States *he had the right of free speech* and was entitled to make these comments. His testimony at the trial was to the effect that he had many friends among the Jews; that he was not against Jews in general, but was against "Russian Communistic Jews," who came into Sonoma County promoting strikes among ranch workers and causing crop losses. He concluded his speech by saying he would withdraw from the Bund if it became "un-American or subversive." He did withdraw in 1939. (R. 353.)

(5) Finding No. VII (R. 160) reads as follows:

> "That defendant kept swastika flags in his office in his home, had at least one picture of Adolf Hitler on his desk, and for a period of time likewise had in his office a plaque or a frame of a type upon which to lay hot plates and upon which was inscribed representations of the Swastika, the colors of the Italian government, and the Rising Sun of the Japanese government."

This finding specifies certain flags and emblems owned by petitioner, but does not describe all of the flags he owned.

He testified (R. 326):

> "Mr. Ornbaun. Q. What flags did you have in your possession Mr. Kuehn? A. I had two American flags, one Swastika flag, I had a Mexican flag, and I had a little Chinese flag, and

for a period of time I had a little plaque, like Mr. Patton called it, where there were on, the Swastika, the round ball and the Italian colors; it was about 4x4."

Petitioner, as a citizen, had a right to collect the flags and emblems of any and all countries.

(6) Finding No. IX (R. 161) reads as follows:

"That defendant has been seen to kiss the picture of Hitler and has been heard to say, 'This is my God'; that he referred to the United States, in conversation with others, as 'your country'; and that he referred to Germany as 'our country.' On one occasion the defendant was seen to take a small United States flag and draw it across the seat of his trousers, at the same time saying, 'This is your government'—speaking at the time to witnesses with whom he was conversing."

Petitioner contends that there is no credible evidence in the record to support this finding.

Prior to the trial petitioner propounded certain interrogatories to the government, in accordance with Rule 33 of the Federal Rules of Civil Procedure, for the purpose of ascertaining the basis of the fraud of which petitioner was accused. (R. 10-12.) The answers to certain of these interrogatories are as follows (R. 13-14):

"Interrogatory No. VI.

The names and addresses of the witnesses who will be produced by plaintiff to prove the allegations contained in Paragraph III of said complaint.

"Interrogatory No. VII.

The names and addresses of the persons to whom it is claimed defendant made any statement or statements relied upon by plaintiff to sustain the allegations contained in Paragraph III of said complaint, and the time and place of the making of said statement or statements."

"Answers to Interrogatories Nos. VI and VII.

In response to paragraphs VI and VII of defendant's interrogatories, affiant states that the following statements and acts were made and performed by defendant:

A. In July, 1937, Kuehn picked up an American flag, turned to his wife, wiped the flag on the seat of his pants, and said—'This is you', meaning—'This is your country (America)' and immediately thereafter he picked up a picture of Hitler and kissed it, and said—'This is my God.' Several times during 1936 and 1937, he stated—'You can't beat my government,' meaning Germany.

All of the foregoing was stated and done in the presence of Mrs. Evana Rahune, whose address is 327 English Street, Petaluma, California, and Mrs. Ronsheimer, Route 4, Box 494, Petaluma, California."

In commenting upon the evidence introduced to sustain the above answers to the interrogatories, the trial judge, in his opinion states (R. 53):

"His former mother-in-law and former sister-in-law testified that in July, of 1937, he kissed Hitler's picture in their presence and said: 'This

is my God,' and rubbed the American flag on the seat of his trousers and said to his then wife: 'This is your government.'

It is clear to me that *the mother-in-law* and the defendant were not on friendly terms and *some doubt as to the credibility of her testimony may exist. However, the sister-in-law's testimony upon the same subject appears to be truthful.*" (Italics ours.)

The honorable trial judge was confused as to the testimony of these two witnesses.

The testimony of Mrs. Mary Theresa Ronsheimer, the former sister-in-law, was as follows (R. 306):

"Q. Did you ever see him with Hitler's picture in his hand? A. Why, yes, I have.

Q. Did you ever see him do anything with the picture, or anything unusual? A. Yes in front of me and my sister he kissed his picture *once.*

Q. He kissed Hitler's picture? A. Yes." (Italics ours.)

The said former sister-in-law did not testify that when, as she stated, the petitioner kissed Hitler's picture, he said, "This is my God;" nor did she testify as to any incident in which the petitioner dishonored the American flag.

Mrs. Evana Rahune, the former mother-in-law, testified on direct examination (R. 270):

"Q. She said that to Mr. Kuehn? A. Yes, and then he grabbed that picture, you know, like that, from where he got that picture, and he said

exactly like that, 'This is my God,' and this was Hitler's picture.

Q. He exhibited the picture and said, 'This is my God'? A. Yes, and grabbed the American flag, grabbed the little flag from the desk and rubbed it on the seat of his pants.

Q. He grabbed the American flag from the desk and rubbed it on the seat of his pants? A. Yes, and put it back again.

Q. What did he say at the time he rubbed the flag on the seat of his pants?

Mr. Ornbaun. I object to that on the ground assuming he said something.

Mr. Patton. Q. Did he say anything? A. He said, "This is your government.' "

And on cross-examination (R. 280):

"Q. You say that he took one of these flags and wiped it on his trousers? A. Yes, that is true.

Q. That is the truth? A. That is the truth.

Q. What flag did he take? A. This small one, the United States flag.

Q. That small one? A. Yes, that is honest, that is the truth.

Q. What was said at that time? A. Well, he said, 'Here, this is your government.'

Q. Whom was he talking to? A. He said to his wife.

Q. *Whom was he talking to at that time?* A. *His wife.*

Q. *Who else was in the room?* A. *I and his wife*, and he said, 'Look here, this is your government,' you see, and he wiped it on his pants.

Q. *Was there anybody else in the room?* A. *No, nobody else.*

Q. *Who is Mrs. Mary Ronsheimer?* A. *It is my daughter, my first daughter.*

Q. That is your first daughter? A. My first daughter.

Q. *But his wife was present on this occasion?* A. *Yes, his wife.*

Q. *Was there anybody else present?* A. *Well, nobody else at that time in the room*, only the three of them." (Italics ours.)

We have this situation:

(a) The honorable trial judge in his opinion referred to the testimony of these two witnesses, stating that it showed that petitioner kissed Hitler's picture, saying "This is my God," and dishonored the American flag, saying "This is your government;" that he (the judge) *seriously doubted* the veracity of the former mother-in-law, due to ill feeling between her and the petitioner, but that he believed the former sister-in-law to be truthful.

(b) The former sister-in-law testified merely that on one occasion in her presence, her sister, former wife of petitioner, also being present, petitioner kissed Hitler's picture.

(c) The former mother-in-law testified that the two incidents took place in her presence, and in the presence of the former wife of petitioner, no one else present; that she immediately told Joseph M. Skoff, her son, about these incidents.

(d) Joseph M. Skoff, former brother-in-law of petitioner and business associate of petitioner, testi-

fied that the first time he heard anything about these incidents, which, according to the testimony of the former mother-in-law of petitioner, happened in 1937, was in the year 1943, when the "F.B.I." talked to these witnesses.

(e) Jane Frances Kuehn, the former wife of the petitioner did not testify.

Petitioner contends that the only disloyal act of which he was accused, the dishonoring of the American flag, was testified to by one witness only, the same being Mrs. Evanna Rahunc, his former mother-in-law, who had threatened to "get even" with him, and whose credibility was doubted by the trial judge.

Petitioner contends that the evidence is insufficient to justify finding No. IX; that there is no evidence in the record to sustain said finding. Very definitely, the Government did not sustain its burden of proof as regards this finding.

(7) Finding No. X (R. 161) reads as follows:

> That defendant assisted in the collection of foodstuffs for shipment to Germany in 1935 or 1936, and prepared labels to be attached to the packages, which labels bore the swastika and rising sun emblems of the Friends of the New Germany.

We ask if it was disloyal of petitioner to collect food to send to hungry people in Germany in 1935 or 1936?

(8) Finding No. XI (R. 161), reads as follows:

> That in May 1939 defendant wrote to Herman Schwinn in Los Angeles telling him that if he did not do something to hold San Francisco, then to forget all about local groups north of Los An-

> geles; and that if he could not come up himself, to send some other person because there was a lot of good material in San Francisco which could still perhaps be held.

Petitioner did so write. It is apparent from the entire record that he did not believe that membership in the Bund, as he understood its aims and purposes, was incompatible with citizenship in the United States. This finding, as do the others, carries only implications, and there is no proof whatever, that in writing this letter petitioner intended anything disloyal to the United States. Further, it was written long after petitioner was admitted to citizenship, and does not in any way show the state of his mind when he was admitted to citizenship.

(9) Finding No. XII (R. 162), is to the effect that petitioner's oath of allegiance to the United States was false, fraudulent and illegal, in that (a) he did not in fact renounce allegiance to Germany, (b) that he did not intend to support and defend the Constitution, and (c) he did not intend to bear true faith and allegiance to the United States; finding No. XIII (R. 163) is as follows:

> That prior to, at the time of, and at all times subsequent to his naturalization, the defendant was acquainted with, sympathized, and agreed with the aims, purposes and doctrines of the German-American Bund.

Finding No. XIV (R. 163), is as follows:

> That on the date of defendant's petition for naturalization, at the time of his naturalization,

and at all times subsequently, the defendant's allegiance has been to Germany rather than to the United States, and his attachment has been to National Socialism rather than to the principles of the United States Constitution. His lack of allegiance to the United States and his lack of attachment to the principles of the Constitution have not changed or varied in the interval since his naturalization, and his attitude in these respects was the same when he was naturalized as in subsequent years up to date of the trial.

Finding No. XV (R. 163) is as follows:

That the Findings of Fact with respect to the consolidated common issue hereinabove set forth are incorporated herein and made a part hereof by reference.

Conclusion of law No. II (R. 164), is as follows:

That the Certificate of Naturalization, granted as aforesaid, was illegally and fraudulently procured by the said defendant, and should be revoked, set aside, and canceled.

Conclusion of law No. III (R. 164), is as follows:

The Conclusions of Law with respect to the consolidated common issue hereinabove set forth are incorporated herein and made a part hereof by reference.

Petitioner respectfully contends that all of the above findings of fact and conclusions of law are based on unjust imputations and implications which have no foundation whatever in the record; that to the contrary, everything in the record shows that from the

time petitioner arrived in the United States he intended to become a loyal citizen, and that at all times since he was admitted to citizenship he has been a loyal citizen. At no place in the record of the consolidated trial or in the individual trial of petitioner is he connected with the Nazi convicts, directly or indirectly.

At this point we desire to apologize to this Honorable Court for the lengthy quotations from the opinions in adjudicated cases which follow, but we do feel that such quotations are warranted in view of the fact that there is here an unjustified attempt to deprive the petitioner of the highest privilege and honor which can be conferred upon a human being—Citizenship in the United States of America.

In the case of *United States v. Sotzek* (C.C.A. 2nd Circuit), 144 Fed. (2d) 576, at 578, 579, the Court in the course of its opinion says:

> "The district court in this case found as a fact that the principles of the German American Bund were incompatible with the philosophy of the Constitution of the United States, yet we cannot believe that that finding is enough to establish fraud on the part of this appellant in accordance with the Supreme Court's decision in Schneiderman v. United States, 320 U. S. 118, 63 S. Ct. 1333, 87 L. Ed. 1796, disapproving the method of what it called *proof by imputation*. 320 U.S. at page 154, 63 S. Ct. at page 1350, 87 L. Ed. 1796. It is true that there the court held that the government had failed to prove that the Communist party, of which the petitioner was an admitted member, stood for the overthrow of the

government by force; and since the whole case against the petitioner rested upon his membership in the organization, this holding would have been enough to dispose of that issue. But the court went further and implied strongly that the *principles and objectives of an organization and of its more vocal leaders cannot be imputed to a member of that organization merely because he is a member.* The leadership principle on which the bund is based may impose its tenets upon him so far as discipline with that order is concerned, and to that extent reduce him to the status of a pawn in a game of power politics; *but he is, nevertheless, entitled in the courts of a free country to be treated as an individual who can and does think and act for himself in accordance with his own conscience and to be judged as one of a body of men who are free.* In reliance on principles given effect in the Schneiderman case, *we hold now that whether or not the German American Bund was opposed to the principles of the Constitution, the fact of Koehler's membership in it does not prove with the requisite certainty that he himself was so opposed that his oath was false or fraudulent when he was admitted to citizenship.* If it be evidence of such falsity or fraud at all, it is far less than the clear, convincing and unequivocal evidence required." (Italics ours.)

It is petitioner's contention that in the present case the government adopted the method of *"proof by imputation"* disapproved of in the *Schneiderman* case, and in *Sotzek v. United States,* supra; that the findings of fact, conclusions of law, and the judg-

ment against him are based on imputations and implications, and that the evidence is insufficient to justify them.

POINT IV.

SUMMARY OF FACTS.

Petitioner contends that a comparison of the facts in the present case with those in adjudicated cases in which the Courts refused to cancel citizenship shows that the evidence is insufficient to establish fraud, and that instead of giving him the benefit of every reasonable doubt, the honorable trial judge resolved every doubt against petitioner.

We desire to call attention to the case of *Baumgartner v. United States,* 322 U. S. 665, 64 S. Ct. 1240, 88 L. Ed. 1525, in which the Supreme Court of the United States determined that the evidence was insufficient to prove fraud, and reversed the decisions of the lower Courts. The facts in the *Baumgartner* case are well summarized in the case of *Bergmann v. United States* (C.C.A. 9th Circuit), 144 Fed. (2d) 34 at 37, as follows:

> "On June 12, 1944, the Supreme Court of the United States decided the case of Baumgartner v. United States, 64 S. Ct. 1240, reversing a decision of the Circuit Court of Appeals, 8 Cir., 138 F.2d 29, which latter court had affirmed the judgment of the District Court, 47 F. Supp. 622, in cancelling Baumgartner's certificate of naturalization upon the ground that it had been procured by fraud. The cited case and the instant case run parallel. In the cited case *Baumgartner*

was extremely critical of President Roosevelt and of the national administrative policies. His statements were that *he admired Hitler and the Nazi program. He indulged in Hitlerian racial prejudices,* and kept a diary in which he had made many entries of pro-German sentiment. His wife and daughter were in Germany, and he said with sarcastic or ironical meaning, that is to say, with his tongue in his cheek (64 S. Ct. 1243): 'Edith has done a very un-American thing, she has joined the Nazi Youth Movement.' *He said 'he would be glad to live under the regime of Hitler.'*

Having compared the record in the instant case with the statement of fact in the Baumgartner case, we have no hesitancy in saying that Baumgartner's conduct after he had obtained his citizenship was much more critical of America and much more praiseful of Germany than Bergmann's after his certificate had been granted." (Italics ours.)

In the *Bergmann* case (supra), 144 Fed. (2d) 34, 36, 38, the evidence showed that the appellant therein was a law-abiding citizen and had shown generosity, but, in the language of the Court:

"The evidence reveals that a number of neighbors, associates and acquaintances of appellant testified to statements they say were made by appellant some three years after the issuance of his certificate of naturalization. *These statements referred in vile terms to the President of the United States and severely condemned the present national administration and the institution of democracy. The statements indicated hatred of the Jews and contempt of Americans.* The wit-

> nesses further testified as to appellant's remarks that America was a good place to make money, that Hitler and the Nazi policies were commendable, and that the Japanese were 'nice people' who had to make the attack upon Pearl Harbor. There is testimony that appellant had been seen to give the Heil Hitler salute, that he approved of Hitler and Nazism, and that he expressed delight over the sinking of the British capital ships Repulse and Prince of Wales." (Italics ours.)

The judgment of the trial Court canceling citizenship was reversed.

We also quote from the opinion of the Court in *United States v. Sotzek* (C.C.A., 2nd Circuit), 144 Fed. (2d) 576, at 577 and 578, where the Appellate Court, reversing the judgment of the trial Court, reviewed the findings and the evidence, and made its own conclusions:

> "In the case of Sotzek, the court found that he emigrated from Germany to the United States in 1928, filed his petition for naturalization on September 20, 1935, and was admitted to citizenship on March 2, 1936. Several *months later he became a member of the German American Bund* in New York and for *the next* four years took an active part in its *affairs,* being appointed a member of the Ordnung Dienst, or O.D., a uniformed group of men patterned after the Nazi Storm Troopers in Germany and organized as a military unit of the bund. At meetings which he attended, there were celebrations of the anniversary of Hitler's rise to power and of other events which by the appellant's own admission no American organization would celebrate. *He denied, however, that he*

ever heard National Socialism discussed. In 1940 he was expelled from the German American Bund for 'undisciplined conduct,' though he says he had previously left the organization."

* * * * * * *

"Aside from this evidence of the appellant's membership and activity in the bunds, there was considerable other testimony adduced to show his state of mind with respect to an adherence to principles of government. *On the day of his naturalization he asserted, 'I am an American, but don't forget that I am a German too.'* He was quoted as endorsing Hitler's anti-Semitic purge of occupied Europe, and as approving as good for workers the sort of socialist government which Hitler was imposing on Germany. In his own behalf Sotzek denied having done anything inimicable to the welfare of the United States, explained his bund membership on the ground that he had joined for purely social reasons, and asserted that he left the organization when he began to realize that there was something wrong about it. He testified that he opposes the present German government because of its persecution of religious minorities and he recognizes that there is a conflict between the tenets of the German and the American governments. He claimed to value his citizenship highly and asserted a disposition to do anything to retain it, including a willingness to fight for this country against Germany. There was evidence that Sotzek had a commendable record of performance as a tool maker in a factory engaged wholly in the production of war materials."

* * * * * * *

"The fact that appellant Sotzek joined the Bund shortly after his naturalization and became

a unit leader about two years later is the most damaging evidence against him, but we think that it is insufficient to support the judgment. *The court rejected testimony to the effect that on one occasion Sotzek expressed contempt for the American flag,* and the other evidence shows merely the sort of talk which is commonly heard uttered by native and naturalized citizens alike, to the effect that this change or that one ought to be made in the government. Such talk does not reveal an unwillingness to abide by the constitution and laws of the country; it is at most the expression of political opinion regarding changes which ought to be made—and the freedom to advocate change is one of our most cherished constitutional rights. Many of Sotzek's remarks, and certain of his actions, may have been imprudent in one so recently naturalized, and it may be thought that they displayed a poor brand of gratitude for the great privilege of having been granted American citizenship but they fall short of proving clearly and convincingly that when he swore allegiance to this country he fraudulently entertained any mental reservation or otherwise swore falsely. The judgment must be reversed." (Italics ours.)

In *Schneiderman v. United States,* 320 U. S. 118, 63 Sup. Ct. Rep. 1333, 87 L. ed. 1796, the Supreme Court of the United States says:

"This does not mean that once granted to an alien, citizenship cannot be revoked or cancelled on legal grounds under appropriate proof. *But such a right once conferred should not be taken away without the clearest sort of justification and proof.* So, whatever may be the rule in a naturali-

zation proceeding (see United States v. Manzi, 276 U. S. 463, 467, 48 S. Ct. 328, 329, 72 L. Ed. 654), in an action instituted under §15 for the purpose of depriving one of the precious right of citizenship previously conferred *we believe the facts and the law should be construed as far as is reasonably possible in favor of the citizen. Especially is this so when the attack is made long after the time when the certificate of citizenship was granted and the citizen has meanwhile met his obligations and has committed no act of lawlessness.* It is not denied that the *burden of proof is on the Government* in this case. For reasons presently to be stated *this burden must be met with evidence of a clear and convincing character that when citizenship was conferred upon petitioner in 1927 it was not done in accordance with strict legal requirements.*" (Italics ours.)

It is true of the petitioner in this case in joining the Friends of New Germany, as it was said of the appellant in the *Schneiderman* case by the Supreme Court of the United States:

> "*He considered membership in the Party compatible with the obligations of American citizenship.*" (Italics ours.)

In the cases quoted from above the Appellate Courts determined that the evidence was insufficient to warrant the cancellation of citizenship, and reversed the judgments of the trial Courts so ordering. This petitioner contends that the same is true in this case, and that the judgment of the Honorable United States District Court should be reversed. In the *Knauer* case (328 U. S. 654, 66 S. Ct. 1304, 90 L. Ed.

1195) the defendant was a "thoroughgoing Nazi bent on sponsoring Hitler's cause here."

We summarize the facts in the present case as briefly as possible:

Petitioner was born in Germany in 1901, and came to the United States in 1921 or 1922; in Germany he received an education equivalent to two years of junior college in the United States; he had no military training and at no time served in the German army; he did not return to Germany after arriving in the United States; he first applied for citizenship in 1928, but his papers were lost, and he again applied in 1933 and was admitted in May, 1935; he became a member of Friends of New Germany, successor to the German American Bund, either just before or just after (either in April or June, 1935) he was admitted to citizenship, and continued to be a member until 1939; he assisted in the organization of the "Petaluma Group" and was chosen as "spokesman or head", but was never referred to as the "leader"; he knew nothing of the Nazi principles of "leadership" and "blood" and knew nothing about National Socialism; so far as he knew the only aims and purposes of the Friends of New Germany and German-American Bund were those set forth in a printed form, a copy of which he mailed with a letter written to the Associated Farmers of California, and which were (1) to support and defend the Constitution, (2) to honor and respect the American flag and foster American ideals, (3) to promote culture in literature, music and physical activity, and (4) to promote friendly relations between

the United States and Germany; the activities of the "Petaluma Group" were purely social; he attended Bund meetings in San Francisco, but was interested in the social side only, and did not listen to any of speeches given by guest speakers; at some meetings he wore a uniform distinguished by a cap, arm band and belt, which articles he burned in 1938; for many years he had owned, and at times worn a swastika ring, which he threw away in 1938; he did not know, and was not directly or indirectly connected with certain criminals imported from the East Coast by the government to testify in the consolidated trial as to the principles and practices of the Bund; he had a collection of small flags in his home including two American flags, one or more swastika flags, a Chinese flag and a Mexican flag, and a hotplate showing the swastika, colors of the Italian government and the Rising Sun of the Japanese government; in 1937 or 1938 he made a speech before the American Legion in which he attacked Communism and communistic Jews; he was not against Jews in general, but was opposed to communistic Russian Jews of the type who came into Sonoma County promoting strikes and causing crop losses; he gave up his allegiance to Germany when he left there in 1921, and had been attached to the principles of the Constitution at all times since he entered the United States; he had been classified for United States military service and would be willing to fight against Germany on German soil, but would prefer to fight Japan; he had been in business in Petaluma since 1929, had a good reputation for honesty and integrity, and maintained a good

credit at the banks; he had always been law-abiding and had never been arrested for any crime; he contributed to the Red Cross and other worthy causes, and purchased United States bonds; in 1935 or 1936 he collected food to be shipped to Germany; in 1939 he wrote to Herman Schwinn, West Coast leader about holding together the local groups of the Bund; he was accused by his former mother-in-law with whom he had quarreled, and who had threatened "to get even" with him, of in 1937 kissing Hitler's picture and of dishonoring the American flag; his wife, said to have been present when these last mentioned incidents were said to have occurred, did not testify; his former brother-in-law, did not "remember" hearing about these incidents until 1943, whereas his mother, the said former mother-in-law of petitioner testified that she discussed the matter with him when the incidents occurred, as she asserted, in 1937; the former sister-in-law of petitioner testified that he once kissed Hitler's picture in her presence; petitioner denied that he ever kissed Hitler's picture or had ever dishonored the American flag.

We respectfully request this Honorable Court to compare these facts with those in the *Baumgartner, Bergmann* and *Sotzek* cases, as appearing from the opinions in those cases and quoted above, in making its decision.

We further respectfully request this Honorable Court to review the evidence in the present case to test its sufficiency as a basis for the findings of fact, and in connection with this request quote from the

opinion of this Honorable Court in the case of *Baumgartner v. United States,* 322 U. S. 665 at 670, 671-672, the following pertinent language:

> "That the concurrent findings of two lower courts are persuasive proof in support of their judgments is a rule of wisdom in judicial administration. In reaffirming its importance we mean to pay more than lip service. ***But the rule does not relieve us of the task of examining the foundation for findings in a particular case.*** The measure of proof requisite to denaturalize a citizen was before this Court in Schneiderman v. United States, 320 U. S. 118. It was there held that proof to bring about a loss of citizenship must be clear and unequivocal. ***We cannot escape the conviction that the case made out by the Government lacks that solidity of proof which leaves no troubling doubt in deciding a question of such gravity as is implied in an attempt to reduce a person to the status of alien from that of citizen.***
>
> * * * * * * *
>
> "Suffice it to say that emphasis on the importance of 'clear, unequivocal, and convincing' proof, see Schneiderman v. United States, supra, at 125, on which to rest the cancellation of a certificate of naturalization would be lost if the ascertainment by the lower courts whether that exacting standard of proof had been satisfied on the whole record were to be deemed a 'fact' of the same order as all other 'facts', not open to review here.
>
> "The gravamen of the Government's complaint and of the findings and opinions below is that Baumgartner consciously withheld allegiance to the United States and its Constitution and laws;

in short, that Baumgartner was guilty of fraud. To prove such intentional misrepresentation evidence calculated to establish only the objective falsity of Baumgartner's oath was adduced. Nothing else was offered to show that Baumgartner was aware of a conflict between his views and the new political allegiance he assumed. But even if objective falsity as against perjurious falsity of the oath is to be deemed sufficient under §338 (a) of the Nationality Act of 1940 to revoke an admission to citizenship, it is our view that the evidence does not measure up to the standard of proof which must be applied in this case." (Italics ours.)

PRAYER.

Wherefore, it is most respectfully submitted a writ of certiorari should issue out of this Honorable Court to the Circuit Court of Appeals for the Ninth Circuit to review its decision herein, and that upon review the judgment of the Circuit Court be reversed and such other and further relief be afforded the petitioner as this Court shall deem proper.

Dated, San Francisco, California,
October 22, 1947.

CASPER A. ORNBAUN,
Attorney for Petitioner.

EVERETT H. ROAN,
Of Counsel.

(Appendix Follows.)

Appendix

Statutes.

Naturalization Proceedings in General.

United States Code, Title 8:

"§372. Proceedings for naturalization. An alien may be admitted to become a citizen of the United States in the manner indicated under sections 372 to 394 of this title and not otherwise." (June 29, 1906, c. 3592, §4, 34 Stat. 596.)

"§373. Declaration of intention. He shall declare on oath before the clerk of any court authorized to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States and to reside permanently therein, and that he will, before being admitted to citizenship, renounce forever all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty, and particularly, by name, to the prince, potentate, State or sovereignty of which the alien may be at the time of admission a citizen or subject. Such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien. No declaration of intention or petition shall be made outside of the office of the clerk of the court."

(June 29, 1906, c. 3592, §4, 34 Stat. 596; March 4, 1929, c. 683, §1, 45 Stat. 1545.)

"§379. Petition for naturalization; when required to be filed; allegations; verification by citizen witnesses. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife, and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition; *Provided,* That if he has filed his declaration before June 29, 1906, he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the prac-

tice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

As to each period of residence at any place in the county where the petitioner resides at the time of filing his petition, there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each has personally known the petitioner to have been a resident at such place for such period, and that the petitioner is and during all such period has been a person of good moral character." (June 29, 1906, c. 3592, §4, 34 Stat. 496; March 2, 1929, c. 536, §6(a), 45 Stat. 1513.)

"§381. Oath renouncing foreign allegiance and to support Constitution and laws. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United

States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same." (June 29, 1906, c. 3592, §4, 34 Stat. 596.)

"§382. Prerequisites to admission to citizenship; residence; character; attachment to principles of Constitution; proof. No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years and within the county where the petitioner resided at the time of filing his petition for at least six months, (2) he has resided continuously within the United States from the date of his petition up to the time of his admission to citizenship, and (3) during all the periods referred to in this section he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. At the hearing of the petition, residence in the county where the petitioner resides at the time of filing his petition, and the other qualifications required by this section during such residence, shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by Section 379 of this title to be included in

the petition. If the petitioner has resided in two or more places in such county and for this reason two witnesses cannot be procured to testify as to all such residence, it may be proved by the oral testimony of two such witnesses for each such place of residence, in addition to the affidavits required by section 379 of this title to be included in the petition. At the hearing, residence within the United States but outside the county, and the other qualifications required by this section during such residence shall be proved either by depositions made before a naturalization examiner or by the oral testimony of at least two such witnesses for each place of residence.

* * * * * * *"

(June 29, 1906, c. 3592, §4, 34 Stat. 596; March 2, 1929, c. 536, §6(b), 34 Stat. 1513.)

"§399. The United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings." (June 29, 1906, c. 3592, §11, 34 Stat. 599.)

Denaturalization Proceedings.

"§738. Revocation of naturalization.

(a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 701 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) * * *

(g) * * *" (Section 338 of the Nationality Code, Oct. 14, 1940, c. 876, Title I, Subchap. III, §338, 54 Stat. 1158, U. S. Code, Title 8, Sec. 738.)

"§701. Jurisdiction to naturalize.

(a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: District Courts of the United States now existing * * * in any state * * *. The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons

resident within the respective jurisdiction of such courts * * *

(b) * * *

(c) * * *

(d) * * *" (Oct. 14, 1940, c. 876, Title I, Subchap. III, §301, 54 Stat. 1140, U. S. Code, Title 8, Sec. 701.)

Appeals.

"§225. (Judicial Code, Section 128, amended.)

Appellate Jurisdiction.

(a) *Review of final decisions.* The circuit courts of appeals shall have appellate jurisdiction to review by appeal or writ of error final decisions—

First. In the district courts * * *

* * * * * * *

(d) *Circuits in which reviews shall be had.* The review under this section shall be in the following circuit court of appeals: The decisions of a district court of the United States within a State in the circuit court of appeals for the circuit embracing such State * * *

* * * * * * *"

(U. S. Code, Title 28, Sec. 225.)

"§230. *Time for making application for appeal on writ of error.* No writ of error or appeal intended to bring any judgment or decree before a circuit court of appeals for review shall be allowed unless application therefor be duly made within three months after

the entry of such judgment or decree." (U. S. Code, Title 28, Sec. 230; Mar. 3, 1891, c. 517, §11, 26 Stat. 829; Feb. 13, 1925, c. 229, §(c), 43 Stat. 940.)

"§211. (Judicial Code, Section 116.) Circuits. There shall be ten judicial circuits of the United States, constituted as follows:

* * * * * * *

Ninth. The ninth circuit shall include the districts of California, Oregon, Nevada, Washington, Idaho, Montana, Hawaii, and Arizona." (U. S. Code, Title 28, Sec. 211.)

Certiorari.

"§347 (Judicial Code, Section 240, amended.)

"(a) In any case, civil or criminal, in a circuit court of appeals, or in the United States Court of Appeals for the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after the judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted appeal."

(U. S. Code, Title 28, §347.)

Plaintiff's Exhibit 5.

Mr. Chairman, Gentlemen, Fellowcitizens:

Dr. Snow knowing me, and knowing, that I am a member of the lately so much talked about German American Bund, has asked me to come up here tonight and tell you something about the unamerican and subversive activities the German American Bund is supposed to be doing. First of all, as I am not accustomed to public speaking, I have made these notes, and on the other hand I always have proof to the words spoken and I have been careful to make no statements in the following for which complete proof is not available or I can prove myself.

It can't happen here. What is "It" and can it or can't it happen here? It sums up the horrors which Communism has perpetrated upon untold millions of Christian human beings in Russia, Hungary, Germany, Mexico, is perpetrating at the present moment in Spain, and is ready to perpetrate upon American Christians. Can it happen here? The answer is in the affirmative. IT CAN HAPPEN HERE because all preparations for such happenings are well under the way.

The strategists of Sovietism, which is imposed upon a nation by a bloodthirsty minority, are plentiful in the United States. Murderers all, they have been made welcome in America. For their benefit, the former law, which debarred criminals from entering this country was conveniently altered, and they were

received with open arms under the complimentary label "political refugees".

And the organization, which I belong to and which is build up out of patriotic citizens, would not be the center of attacks and slanderous lies, etc., if it was not for the fact, that the Bund has always dared to state openly and honestly, that Communism is Jew-invented, Jew-directed and Jew-controlled, both in this country as in Russia, Hungary, Mexico, Spain, China and formerly as it was in Germany.

I, as most of the Bund-members, have seen Communism in Germany and I tell you, Gentlemen, no-one who has not seen the dangers of Communism can not realize it. You have seen pictures of Spain and China, where innocent women, with babies in their arms are coming down the streets and are shot at, but you have not seen the machineguns behind these women, who are only used for shields and that's only a little part of Communism and then talk about humanity. What would you do, just ask yourself. But I was there at that time in Germany and that's why I will fight to the last drop of blood in me to beware my fellowcitizens and my community for any happenings like that. And everybody else would, if we only realized the danger, which is lying over us. But most of our fellow citizens do not take enough interest about what is going on, and when the house is burning, they wonder how it could catch fire.

But as citizens of the United States now, we have the duty, to make use of our knowledge and expe-

rience of Communism, we have seen it over there and we certainly want to prevent this our country now, to go through the same terrible happenings, which took place in Russia, Hungary, Germany and are now taking place in Spain and China.

In our fight against Communism in this country we have been and are always attacked as "Nazis". This however is an old trick of Communism to spread a scare of Fascism, in order to detract attention from their own subversive, un-American activities. That is why we are today charging Congressman Dickstein with the persecution of upright, loyal American citizens as "Nazis", making unwarranted charges, while hiding behind his congressional immunity. We charge him, by spreading this "Nazi scare" to give his Russian friends more time for their communistic undermining of American principles. We charge, as I said before, Mr. Dickstein, as a member of the immigration committee of opening the gates of the United States to foreign agitators, now traveling all over this country, spreading race hatred and class hatred.

German Americans in the past have always shown their loyalty to the United States in any emergency. It might have been under George Washington and Abraham Lincoln and again it was in the last world war, where in many a case brother has fought against brother, but they were loyal to the United States. Today another emergency has arisen. The German American Bund is calling all patriotic citizens to the colors, in order to fight side by side with many other patriotic societies against the widespread red network in the United States, fight against Communism, An-

archism, against lawlessness and Godlessness and for real democracy, for the benefit of this our country the United States of America.

The German American Bund, being a nationwide American organization, is not defending the policies of the new German Reich, because we feel that the laws passed in Germany are none of our business. We merely present the other side of the story, which has been presented in our press rather one-sided. We do not try to help Germany, as they are getting along lots better and very nicely without any help and advice from us. *But* we do try to promote good-will and friendship between the U. S. and Germany, as they always have been friends and only got plunged in the world war through the drums of propaganda and this propaganda is spread worse today than ever.

May I show you a few samples from both sides. Treatment of the Jews in Germany, etc., is as little our business, as Germany pays any attention to the fact that we have laws in this country prohibiting the intermarriage between Gentiles and Orientals, or having social clubs in America, which do not permit Jews to become members. Or having resorts where on the entrance are signs placed: Gentiles only. Or having grounds where Jews can not enter or even buy and this is right across the bay in Burlingame. Or having street cars, where the negros have their special compartments, etc., so why shall we kick about what Germany is doing when they pass certain laws. Lots of these things look funny to us but if we were there, we probably could understand things a lot better too. May I just mention the church situation, by coming

right to the point. Here church and state are separate, and nobody thinks anything about that, and that is just what they are trying to do over there, and that's why all the big squealing and church fights are going, because all those ministers and priests and clergymen will be losing their nice fat government pay checks. And through all their crying they are trying to arouse public opinion.

And now may I in short present the case, of which Dr. Snow has spoken to me about too, which happened just a few days ago in New York between Bund members and the American Legion. You may not like it, the way I will bring it out to you, but the way I think, I can not change it and I am always right straight from the shoulder, whether you like it or not. It may not be uncommon for fists to fly at a political rally, overcharged with wine, whisky and beer, but when a peaceful assembly of men with their wives and children, which was the greater part of the audience, is invaded by a score of uninvited guests, whatever honorable designation they may claim, for the specific purpose of starting a riot, and then in the last minute, clapping on American Legion caps on their heads, and blood flows as a consequence of this riot, then it is time for law-abiding citizens to consider ways and means of suppressing the kind of agitation, that leads to such results.

This riot apparently was instigated by Jews and scheduled for this certain day. And even our Representative Samuel Dickstein must have known about this ahead of time. According to press reports he

recently declared in Congress, that there would be bloodshed at this scheduled meeting.

You gentlemen as members of the American Legion, I do not think, would approve to tactics, as just explained and I am confirmed in the belief in the Legion's fairness and honorable aims in the report that J. F. Cross, state commander of the American Legion, said that of all the names mentioned in connection with the disturbance, only two at any time were members of the Legion, according to the records * * * Thomas F. Dugan, Kings County commander of the Legion, said investigation had been started. He added that the members of the Legion who attended this meeting in Legion caps were in clear violation of the mandates and orders of the national organization, and must be punished. Investigation of the disorder was started by the police department and the American Legion heads. He also warned them, that if they did not take disciplinary action against the guilty legionnaires, he recommended to the state executive committee that the charters of their posts be suspended or revoked.

Gentlemen, all American patriots, Legion members, veterans and others are welcome as our guests at any time, open or closed meetings. We desire and intend to attain the friendship of all patriotic American organizations, determined with us to maintain or reconstitute these our United States a sovereign and independent, morally and ethically clean, socially just and God-fearing nation, and hence the uncompromising enemies of international, atheistic, Jewish Marxism

in all its guises and disguises. Let white people run this country, as they did before the Jewish invasion. Over one-quarter million European Jews are coming to the United States to throw white American workers out of jobs.

In closing I will read you a couple reports on the Bund from here and there.

" Portland Police, Congress Investigation, General Robinson Santa Rosa Celebration, Purpose and Aim.

I am thanking you of having given me the opportunity of speaking to you about the German American Bund and I am sure, that you do understand the Bund lots better now, and this would be the case, if everybody would know more about the Bund. But should it occur, that the Bund ever would change its guide lines to anything un-American or subversive, I would withdraw my name from the membership list immediately. I believe America for the Americans and if these agitators see no matter what kind they may be, see a haven in Communistic Russia, or may these agitators be Fascist or Nazis, why don't they go back to Russia, Spain, Italy or Germany? And if we do not have the laws to get rid of them, let Congress enact laws at once, that will do it.

America is a great and hospitable country, but it should have no room for conspirators, traitors, ingrates and fools. And that is why most any national thinking American, no matter what nationality he may be, may he even be born here, is today called a Nazi or Fascist.